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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICHAEL E. HUBER,

*Petitioner,*

VS.

12 || PALMER, *et al.*,

## *Respondents.*

3:11-cv-00600-LRH-WGC

## ORDER

Petitioner has filed a habeas petition without either paying the filing fee or filing an application to proceed *in forma pauperis*. It does not appear from file review that a dismissal without prejudice will materially affect a later analysis of the timeliness issue in regard to any promptly filed new action.<sup>1</sup> The present improperly-commenced action therefore will be dismissed without prejudice.

<sup>1</sup> The papers on file and the online docket records of the this Court, the Supreme Court of Nevada, and the Eighth Judicial District Court for the State of Nevada reflect the following. Petitioner was convicted in Nevada state court, pursuant to a jury verdict, of multiple charges including two counts of sexual assault. His conviction was affirmed on direct appeal on January 12, 2006. The time for filing a petition for a writ of *certiorari* expired on or about April 12, 2006. The federal petition form in this case asks whether the petitioner filed a post-conviction or habeas petition in *state* court. Petitioner responded “yes” and referred to a July 20, 2011 date and to something being “received only” on August 15, 2011. Neither the state district court nor the state supreme court show on their online docket records *any* state court proceedings by petitioner subsequent to early 2006. Rather, the only matter shown to be filed on the above-referenced three docket records is petitioner’s prior *federal* petition in this Court in No. 3:11-cv-00516-LRH-VPC, which was filed on July 20, 2011. That federal petition was dismissed on August 11, 2011, with the order and judgment of dismissal being mailed to petitioner on that date. The Court dismissed No. 3:11-cv-00516 with prejudice as, *inter alia*, untimely. It thus would appear that a dismissal of this matter without prejudice would not materially affect a later analysis of the timeliness issue in regard to any promptly filed new action. There have been no state proceedings following petitioner’s state court direct appeal for over five years, and this Court already has dismissed a prior federal petition by petitioner as untimely. Petitioner at all times remains responsible for calculating the running of the federal limitation period as applied to his case and properly commencing a timely-filed federal habeas action.

1 IT THEREFORE IS ORDERED that this action is DISMISSED without prejudice to the filing  
2 of a new petition in a new action accompanied by either the required \$5.00 filing fee or a properly  
3 completed application to proceed *in forma pauperis*. The Court's dismissal without prejudice does not  
4 signify that a new petition would not be subject to dismissal as successive, untimely, for lack or  
5 exhaustion and/or on any other basis.

6 IT FURTHER IS ORDERED that the Clerk shall send petitioner two copies each of an  
7 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital Section 2254  
8 habeas petition form, one copy of the instructions for each form, and a copy of the papers that he  
9 submitted in this action.

10 The Clerk of Court shall enter final judgment accordingly, dismissing this action without  
11 prejudice.

12 DATED this 11th day of October, 2011.



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15 LARRY R. HICKS  
16 UNITED STATES DISTRICT JUDGE  
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